



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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Tax Counsel IV
Settlement & Taxpayer Services Division (MIC: 82)
Board of Equalization Legal Department
450 N Street
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-15-144

Dear Ms. Cooke Jackson:

This letter responds to your request for advice regarding the mass mailing provisions of the Political Reform Act (the "Act").¹

QUESTION

May the Board of Equalization ("BOE"), under the exception for essential mailings in Regulation 18901(b)(6), send out a notice to taxpayers informing them of the specific Board Member that has been designated to be a point of contact for taxpayers in dealing with each of the BOE's Out-of-State District offices?

CONCLUSION

Yes. The item sent is essential to the functioning of the BOE's tax program and the use of the officials' names is necessary to the functioning of the program.

FACTS

The state is divided into four equalization districts. Voters in each district elect a Board Member to represent them. As a result, taxpayers and constituents located within California have a clearly identified Board Member they may contact for assistance.

The main Out-of-State District office is located in Sacramento with additional offices offering limited services in Chicago, New York, and Houston. These offices provide audit coverage throughout the United States (except California) and Canada. The primary function of the Out-of-

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

State District offices is to audit businesses with headquarters outside California. Auditors travel to corporate headquarters to review books and records and/or obtain the electronic data necessary to verify the accuracy of filed returns. In addition, audit staff handles any field work necessary for the completion of reports that facilitate refund claims.

In addition to audit activities, staff in the main Out-of-State District office in Sacramento, also referred to as the “Western States” office, handle typical compliance activities, including registration and account maintenance. Additionally, staff in the Western States office administers the BOE’s voluntary disclosure program and the Out-of-State Registration Program, also known as the “1032 program.” Under this program, BOE staff identifies and registers out-of-state sellers with nexus in California.

Pursuant to their investigative powers, Board Members may inquire into the administration and operation of BOE field offices located within the district they represent. Such involvement may include reviewing and investigating audit, compliance, and appeals activities involving taxpayers in their district to ensure such activities are conducted in a manner consistent with statutory mandates and BOE policies.

Historically, such Board Member involvement has never been formally provided to the Out-of-State District offices. Although the Out-of-State District offices have traditionally dealt with a variety of issues different from in-state district offices, such as nexus issues, it has been determined that general Board Member assistance will be helpful for the following reasons:

1. Out-of-State District taxpayers are “constituents” of the Board Members in the general sense of the word. These taxpayers have retail locations, warehouses, distribution centers, and other operations within California. In addition, these taxpayers employ constituents and their customers are constituents. The Out-of-State District offices oversee the largest accounts filing returns with the BOE.

2. Board Members, from time to time, investigate the administration of tax as it relates to Out-of-State District audits, claims for refund, appeals, or other issues.

3. Taxpayers and their representatives working with the Out-of-State District offices do not have access to Board Members and their staff in the same way as in-state taxpayers and their representatives. When issues arise in their dealings and interaction with Out-of-State District offices, taxpayers and their representatives have a right to address a Board Member, and should have a more defined method for communicating with Board Members.

Recently, the members of the Board of Equalization adopted a proposal to assign one Out-of-State District office to each of the four district-elected Board Members in order to facilitate communication of constituent concerns and provide assistance. BOE believes it is important for out-of-state taxpayers to be aware of the new policy and that they may contact a specific Board Member’s office for assistance. Since BOE is the only elected tax board in the United States, out-of-state taxpayers may be unaware of the Board Members’ role and their ability to contact a Member’s office for assistance.

BOE intends to get the information out in a variety of ways, including a mass mailing/postcard to certain taxpayers:

- The postcards will only be mailed to those taxpayers registered with out-of-state accounts for which the BOE does not have email addresses.
- There will be four different versions of the postcard, each containing the assigned Board Member's name and other references: (1) in the text you identify the Member and (2) their respective district number and (3) again the Member's last name in the website address.

ANALYSIS

Mass Mailings

Section 89001 states that “no newsletter or other mass mailing shall be sent at public expense.” Regulation 18901(a) states that “except as provided in subdivision (b), a mailing is prohibited by section 89001 if the following criteria are met:

“(a) Except as provided in subdivision (b), a mailing is prohibited by section 89001 if all of the following criteria are met:

“(1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. For purposes of this subdivision (a)(1), the item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.

“(2) The item sent either:

“(A) Features an elected officer affiliated with the agency which produces or sends the mailing, or

“(B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.

“(3)(A) Any of the costs of distribution is paid for with public moneys; or

“(B) Costs of design, production, and printing exceeding \$50.00 are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this regulation.

“(4) More than two hundred substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b).”

Under your facts, you stated all four enumerated criteria will be met.

The Essential Mailings Exception

Regulation 18901(b)(6) provides an exemption for:

“Any item sent by an agency responsible for administering a government program, to persons subject to that program, in any instance where the mailing of such item is essential to the functioning of the program, where the item does not include the elected officer’s photograph; and where use of the elected officer’s name, office, title, or signature is necessary to the functioning of the program.”

Your facts meet all the requirements in the exception:

(1) The item is sent by the agency responsible for administering a government program.

The BOE through its Out-of-State District offices provides audit coverage throughout the United States (except California) and Canada. The primary function of the Out-of-State District offices is to audit businesses with headquarters outside California. Auditors travel to corporate headquarters to review books and records and/or obtain the electronic data necessary to verify the accuracy of filed returns. In addition, audit staff handles any field work necessary for the completion of reports that facilitate refund claims. The BOE has assigned one Out-of-State District office to each of the four district-elected Board Members, for purposes of facilitating communication of constituent concerns and providing assistance.

(2) The item is sent to persons subject to that program.

Out-of-State District taxpayers are “constituents” of the BOE because they have retail locations, warehouses, distribution centers, and other operations within California. In addition, these taxpayers employ constituents and their customers are constituents. The Out-of-State District offices oversee the largest accounts filing returns with the BOE.

(3) The item is essential to the functioning of the program.

The BOE has modified the tax program to assign Board Members to each of the Out-of-State District offices. Historically, while each Board Member represented taxpayers in their district, taxpayers and their representatives working with the Out-of-State District offices did not have access to Board Members and their staff in the same way. With the change in policy to assign one Out-of-State District office to each of the four district-elected Board Members in order to facilitate communication of constituent concerns and providing assistance, BOE believes notice to Out-of-State District taxpayers is essential to the functioning of the program and implementation of the change. It is important for these taxpayers to be aware that they may contact a specific Board Member’s office for assistance, especially since BOE is the only elected tax board in the United States and Out-of-State District taxpayers may be unaware of the Board Members’ role and their ability to contact the assigned Member’s office for assistance.

(4) The item does not include the elected officer's photograph; and any use of the elected officer's name, office, title, or signature is necessary to the functioning of the program.

In essence, this factor asks if the use of the name or reference is required or, put another way, whether the essential purpose of the mailing can be achieved with the name and other references to the elected officer excised by the text.² Each postcard contains references to one Board Member - twice in the text ((1) name and (2) district) and once in the web address (the last name) - so that taxpayers can contact the official. Each reference to the Member is absolutely necessary to achieve the overall purpose of the notice, a purpose we have already concluded is essential to the functioning of the program. Consequently, based on Regulation 18901(b)(6), the sample notice presented may be mailed and is not subject to the restrictions in Section 89001 and Regulation 18901.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: John W. Wallace
Assistant General Counsel
Legal Division

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² See e.g. *Hightower* Advice Letter, No. A-08-050 and *Anderson* Advice Letter, No. A-03-033.